

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. STATE OF OKLAHOMA, ex rel. W. A. )  
DREW EDMONDSON, in his capacity as )  
ATTORNEY GENERAL OF THE STATE )  
OF OKLAHOMA and OKLAHOMA )  
SECRETARY OF THE ENVIRONMENT )  
C. MILES TOLBERT, in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiffs,

vs.

No. 05-CV-0329 TCK-SAJ

1. TYSON FOODS, INC. )  
2. TYSON POULTRY, INC. )  
3. TYSON CHICKEN, INC. )  
4. COBB-VANTRESS, INC. )  
5. AVIAGEN, INC. )  
6. CAL-MAINE FOODS, INC. )  
7. CAL-MAINE FARMS, INC. )  
8. CARGILL, INC. )  
9. CARGILL TURKEY )  
PRODUCTION, LLC. )  
10. GEORGE’S, INC. )  
11. GEORGE’S FARMS, INC. )  
12. PETERSON FARMS, INC. )  
13. SIMMONS FOODS, INC. and )  
14. WILLOW BROOK FOODS, INC. )

[Re: Docket #994]

Defendants.

**ORDER IMPLEMENTING RULES FOR DISCOVERY  
OF ELECTRONICALLY STORED INFORMATION (“ESI”)**

The parties filed a Motion to Enter Agreed Order Implementing Rules for Discovery of Electronically Stored Information, requesting that the Court enter an agreed order regarding electronic discovery. The Court **grants** the motion for entry of an agreed order. [Docket No.

994]. The Court additionally finds **moot** the motion by the Plaintiffs for an order implementing rules for electronic discovery based upon the representation of the parties that they have agreed to a procedure regarding electronic discovery. [Docket No. 929]. Nothing in this Order precludes the parties from filing appropriate discovery motions related to electronic discovery.

Based upon the representations and agreements of the parties,

IT IS HEREBY ORDERED that:

I. On or before January 15, 2006, representatives of Plaintiff and each Defendant shall meet and confer, either collectively or separately as the parties may deem appropriate, concerning the issues set forth below.

A. Each party shall bring to the initial conference sufficient knowledge and information concerning that party's methods of storing, archiving, routine preservation, searching, and retrieving of electronic data to allow meaningful discussion of the issues described below with respect to the party and each subdivision of the party likely to have information which is discoverable in this action as provided by Fed. R. Civ. P. 26. The parties shall have additional meetings as necessary to address discovery issues as provided in the Federal Rules of Civil Procedure, and shall bring to such meetings sufficient knowledge and information pertaining to the issues to be discussed.

B. Each party shall be prepared at these conferences to discuss, as to its own storage, archiving, searching, and retrieval of electronic data, the following subjects:

1. The identities, titles, and responsibilities of its custodians of electronic materials;
2. The primary person who will represent that party in communications with other parties concerning ESI. To the extent possible, that person should be familiar with

electronic systems, technical aspects of e-discovery, organizational format issues, document preservation of ESI and methods of dispute resolution for e-discovery and designate a person to act as e-discovery liaison for each party;

3. The nature, scope, character, organization, and format of each electronic storage system that the party has employed during the time periods relevant to this action. Any party claiming a lack of knowledge concerning the relevant information shall provide a basis for such claim, to the extent that basis can be determined;

4. The document preservation including retention and destruction policies for each of these systems;

5. The types and subject matter of potentially discoverable data that may exist in the systems, as well the present locations of such data (including databases, networks, systems, servers, archives, back-up or disaster-recovery systems, tapes, disks, drives, cartridges, laptops, personal computers, internet data, and other storage media);

6. The identity of the systems and/or media which are readily accessible;

7. The identify of the systems and/or media which are not readily accessible, as well as the basis for asserting the lack of reasonable accessibility;

8. The extent to which any such data may have been destroyed or lost, including duration of such loss, to the extent such duration is known;

9. Methods that that party can employ to ensure the integrity and preservation of such data;

10. Whether any potentially discoverable data may have been deleted, whether restoration of the data is possible, and what would be necessary to accomplish that restoration;
11. Method(s) and scope by which that party's e-mail may be searched and ESI produced;
12. The identification of systems or formats which may contain discoverable information, which a party does not intend to search;
13. Any potential problems that party presently anticipates in responding to electronic discovery;
14. For the general types of information, the formats that the parties will employ for the production of discoverable information, *i.e.*, hard copy, electronic image files (*i.e.*, .pdf or .tiff formats), or native file formats;
15. Any specific software necessary to search, identify, retrieve, or read any electronic data that may be produced;
16. Methods by which information produced in electronic forms may be authenticated or, if possible, may be self-authenticating;
17. As to each Defendant, whether any of the potentially relevant data is claimed to be proprietary or trade secret and any measures that Defendant wishes taken to protect that data consistent with the Confidentiality Order entered in this case as may be modified to address ESI;

18. As to the State of Oklahoma, whether any potentially relevant data that is already public data under Oklahoma state law and how that public information may presently be accessed;

19. As to all parties, the method by which that party intends to identify and segregate from any information produced in an electronic format that is claimed to be protected by the attorney-client or other privilege, by the work-product doctrine, or other protection recognized by any other Order of the Court;

20. For information to be produced in an electronic format, the methods and costs for retrieving each particular type of data from each particular electronic system;

21. A proposed date for the parties to serve Supplemental Initial Disclosures to incorporate the identification of electronically stored information;

22. Addressing the inadvertent production of privileged or confidential information, and potential procedures to minimize the waiver of same; and

23. Parameters for addressing the scope and number of interrogatories, requests for admissions and depositions relating to items listed in paragraph I(B).

II. Not later than February 15, 2007, the parties shall submit to the Court a proposed stipulated order embodying their agreements concerning electronic discovery. The Court will consider entering an order to memorialize the agreements of the parties to whatever level of detail the parties deem appropriate; however, the proposed stipulated order should address at a minimum:

A. The primary electronic discovery contact for each party;

B. The method(s) the parties intend to employ to assure the retention and integrity of potentially discoverable information;

C. The format(s) in which information will be produced;

D. Any data or types of data that the parties can agree now are self-authenticating;

E. To the extent data or electronic materials are not self-authenticating, the method by which a party may authenticate for purposes of admissibility data or electronic material produced by another party;

F. The methods for segregating and identifying information subject to claims of privilege or other protections, and procedures for addressing information inadvertently disclosed;

G. The method(s) for allocating the costs of the production of various types of information from various systems; and

H. A proposed date by which the parties will exchange Supplemental Initial Disclosures to address electronically stored information.

III. The parties may agree to defer any of the issues listed in paragraph II for further discussion at a later date.

IV. To promote mutual disclosure of information relating to ESI, the parties are encouraged to include in their proposed stipulated order the mutual exchange of interrogatories, requests for admission, and depositions relating to ESI. Such stipulated discovery will not count against the limits on discovery requests and depositions set forth in the rules or in other orders of this Court.

V. To the extent the parties cannot agree on or agree to defer one or more of the issues described above, the parties shall include in the proposed stipulated order proposed alternative provisions (bracketed and identified by proposing party) addressing each specific subject in

dispute. Any party may submit with the proposed stipulated order a memorandum arguing in support of its particular proposed provision(s).

VI. Nothing in this order is intended to address or resolve any specific request for electronic data or to express any opinion as to whether any particular piece or group of data is properly discoverable under Rule 26 or Rule 34. The Court will consider such matters, if necessary, in the context of specific discovery requests and responses.

Dated this 5th day of December 2006.

  
Sam A. Joyner  
United States Magistrate Judge